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<b>R.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 21-1150</b>
	)	<b>Issued: April 5, 2022</b>
<b>DEPARTMENT OF THE NAVY,</b>	)	
<b>PHILADELPHIA NAVAL SHIPYARD,</b>	)	
<b>Philadelphia, PA, Employer</b>	)	
	)	

*Thomas R. Uliase, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

## DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

## JURISDICTION

On July 22, 2021 appellant, through counsel, filed a timely appeal from a May 10, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

## ISSUES

The issues are: (1) whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective December 12, 2019 as she had no further disability

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

or residuals causally related to her May 5, 1992 employment injury; and (2) whether appellant has met her burden of proof to establish continuing employment-related disability or residuals on or after December 12, 2019 due to her accepted employment injury.

### **FACTUAL HISTORY**

On May 27, 1992 appellant, then a 32-year-old insulator helper, filed a traumatic injury claim (Form CA-1) alleging that on May 5, 1992 she sustained a contusion of the left shoulder when getting up she struck her shoulder on a valve while in the performance of duty. OWCP accepted the claim for a left shoulder contusion, adhesive capsulitis of the left shoulder, calcifying tendinitis of the left shoulder, and brachial plexus lesions of the left shoulder. Appellant experienced intermittent periods of disability from June 1 to July 23, 1992, when she returned to work with restrictions. She stopped work on February 5, 1994 and did not return.

The last medical evidence of record from appellant regarding her treatment for her left shoulder condition was in June 2007.

By decision dated February 17, 2010, OWCP reduced appellant's wage-loss compensation, effective March 14, 2010, based on its finding that she had the capacity to earn wages in the constructed position of a medical record coder.

On August 21, 2019 OWCP referred appellant, together with the case record and a statement of accepted facts (SOAF) to Dr. Steven J. Valentino, an osteopath, for a second opinion examination. The SOAF described her employment injury and set forth the accepted conditions.

In a report dated September 10, 2019, Dr. Valentino reviewed appellant's history of injury. On examination he found normal range of motion of the upper extremities and no instability or impingement of the shoulder. Dr. Valentino further found negative Neer, Hawkins and empty can sign tests, and no Tinel's sign or Phalen's test. He advised that there was no evidence of complex regional pain syndrome (CRPS). Dr. Valentino found trace left hand weakness, which he attributed to residuals of a transient ischemic attack (TIA) with otherwise normal neurological findings. He diagnosed a contusion, adhesive capsulitis, calcifying tendinitis, and brachial plexus of the left shoulder, all of which had resolved. Dr. Valentino related, "Objectively, [appellant] has recovered from her work injury. Subjective complaints do not correspond with objective findings. There are no diagnostic studies included in [appellant's] records, nor did she provide any." He found that appellant required no further medical treatment due to the employment injury and that, regarding her left shoulder condition, she could resume work without restrictions. In a work capacity evaluation (Form OWCP-5c) of even date, Dr. Valentino indicated that she could work full time without restrictions considering her employment injury.

On September 26, 2019 OWCP notified appellant of its proposed termination of her compensation and medical benefits as the weight of the evidence established that she no longer had any employment-related disability or residuals of her accepted employment injury. It afforded appellant 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

On October 2, 2019 appellant's counsel challenged the proposed termination of compensation benefits. He argued that Dr. Valentino's opinion was not rationalized, failed to

include complete examination findings, and failed to explain whether her trace left hand weakness was related to the work injury.

By decision dated December 12, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits effective that date. It found that Dr. Valentino's opinion represented the weight of the evidence and established that she had no further disability or residuals of her accepted employment injury.

On December 19, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. On March 31, 2020 counsel requested a review of the written record in lieu of an oral hearing.

By decision dated April 22, 2020, OWCP's hearing representative affirmed the December 12, 2019 decision.

In a report dated June 9, 2020, Dr. Laura E. Ross, an osteopath, obtained a history of appellant dislocating her shoulder on May 5, 1992 when she fell on a valve. On examination she found a loss of muscle in the anterior and posterior deltoids. Dr. Ross further found eschar of the dorsal aspect of the shoulder and scapulothoracic dysfunction, and reduced motion of the left shoulder. She diagnosed left shoulder pathology due to a previous dislocation, with the development of adhesive capsulitis and left severe ulnar neuropathy. Dr. Ross noted that appellant had undergone shoulder manipulations under anesthesia. She recommended a magnetic resonance imaging (MRI) scan.

An MRI scan of the left shoulder, obtained on July 6, 2020 demonstrated minimal downward sloping of the distal acromion and no evidence of a rotator cuff or labral abnormality.

In an August 3, 2020 progress report, Dr. Ross found crepitus with motion and positive impingement signs on examination of the left shoulder. She indicated that the MRI scan and x-rays had demonstrated impingement tendinopathy of the left shoulder. Dr. Ross diagnosed left shoulder pathology due to a prior dislocation, adhesive capsulitis, left severe ulnar neuropathy, and acromioclavicular joint arthrosis. She found that appellant should be off-work and recommended left shoulder surgery.

On August 14, 2020 appellant, through counsel, requested reconsideration.

By decision dated November 18, 2020, OWCP denied modification of its April 22, 2020 decision.

On December 7, 2020 appellant requested reconsideration.

By decision dated December 22, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim as she had not submitted new and relevant evidence or raised a new argument sufficient to warrant reopening her case for further review of the merits under 5 U.S.C. § 8128(a).

In a report dated February 10, 2021, Dr. Ross discussed appellant's history of injury and reviewed findings from a 2002 MRI scan of the left shoulder demonstrating supraspinatus tendinosis and a 2005 MRI scan of the shoulder demonstrating an abnormal signal at the

supraspinatus compatible with focal tendinosis without a discrete tear. She advised that appellant had related that appellant's left shoulder had "locked up on [appellant]" around three months earlier. Dr. Ross discussed appellant's history of TIAs and peripheral artery disease. She diagnosed status post left shoulder dislocation with impingement syndrome, the development of adhesive capsulitis, and severe left upper extremity ulnar neuropathy with some contractures of the middle, ring, and small fingers passively correctable. Dr. Ross attributed the diagnoses to the May 5, 1992 employment injury. She found that appellant would likely require left shoulder surgery. Dr. Ross related, "In addition, it is my understanding that [appellant] is undergoing treatment at [a specialized facility] regarding [appellant's] left ulnar neuropathy, which is related to the injury in question." She listed the evidence she had reviewed in reaching her conclusions.

On March 4, 2021 appellant, through counsel, requested reconsideration. Counsel asserted that February 10, 2021 report from Dr. Ross established that she had residuals of appellant's employment injury or, in the alternative that a conflict in medical evidence existed.

By decision dated May 10, 2021, OWCP denied modification of its November 18, 2020 merit decision.

### **LEGAL PRECEDENT -- ISSUE 1**

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.<sup>3</sup> After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>4</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>6</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective December 12, 2019, as she had no further disability or residuals causally related to her May 5, 1992 employment injury.

OWCP properly accorded the weight of the evidence to Dr. Valentino, who provided a second opinion examination on September 10, 2019. Dr. Valentino discussed appellant's history

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<sup>3</sup> *R.H.*, Docket No. 19-1064 (issued October 9, 2020); *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

<sup>4</sup> *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

<sup>5</sup> *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

<sup>6</sup> *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

<sup>7</sup> *A.J.*, Docket No. 18-1230 (issued June 8, 2020); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

of injury and provided examination findings showing no instability, impingement, or loss of motion of the left shoulder. He further found negative Neer, Hawkins, and empty can sign tests, a negative Tinel's sign or Phalen's test, and no evidence of CRPS. Dr. Valentino attributed appellant's trace weakness of her left hand to residuals of a TIA. He diagnosed a contusion, adhesive capsulitis, calcifying tendinitis, and brachial plexus of the left shoulder, and asserted that all of the diagnosed conditions had resolved. Dr. Valentino opined that appellant had no residuals of her work injury and provided as a rationale that her subjective complaints failed to correspond to the objective findings. He further found that she required no further medical treatment and could return to her usual employment considering her accepted employment injury.

Dr. Valentino based his opinion on a proper factual and medical history and findings on physical examination. He provided medical rationale for his opinion by explaining that there was no objective findings on examination supporting continued residuals or disability due to the accepted conditions.<sup>8</sup> The Board, therefore, finds that OWCP properly relied upon the reports of Dr. Valentino in terminating appellant's wage-loss compensation and medical benefits.<sup>9</sup>

On appeal counsel contends that the SOAF provided to Dr. Valentino failed to provide a description of appellant's work duties. OWCP procedures, however, provide that a description of work duties is not an essential element of the SOAF.<sup>10</sup>

Counsel further contends that Dr. Valentino failed to adequately describe his examination findings, failed to explain whether the left hand weakness was related to the injury, provided inadequate rationale, and did not review a 2002 MRI scan. As discussed, however, Dr. Valentino provided findings on examination, attributed appellant's left hand weakness to a prior TIA, and submitted his opinion with medical rationale. Consequently, his opinion represents the weight of the medical evidence.<sup>11</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing disability or residuals after that date, causally related to the accepted employment injury.<sup>12</sup> To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such causal relationship.<sup>13</sup>

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<sup>8</sup> See *Y.J.*, Docket No. 20-1123 (September 27, 2021); *E.J.*, *supra* note 6.

<sup>9</sup> See *L.B.*, Docket No. 19-1380 (issued February 11, 2020).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.6 (September 2009).

<sup>11</sup> See *Y.J.*, *supra* note 8.

<sup>12</sup> See *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>13</sup> *Id.*

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>14</sup> This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>15</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that the case is not in posture for decision regarding whether appellant has met her burden of proof to establish continuing employment-related disability or residuals on or after December 12, 2019 due to her accepted employment injury.

Subsequent to the termination of appellant's compensation, she submitted reports from Dr. Ross. On June 9, 2020 Dr. Ross reviewed appellant's history of the accepted May 5, 1992 employment injury and diagnosed left shoulder pathology with the development of adhesive capsulitis and severe left ulnar neuropathy. On August 3, 2020 she diagnosed left shoulder pathology due to a prior dislocation, adhesive capsulitis, left severe ulnar neuropathy, and acromioclavicular joint arthrosis. Dr. Ross provided examination findings and concluded that appellant should be off work and recommended left shoulder surgery. In a February 10, 2021 report, she attributed the diagnosed conditions of left shoulder impingement syndrome, adhesive capsulitis, and severe left upper extremity ulnar neuropathy to the May 5, 1992 employment injury and found that appellant required additional left shoulder surgery.

As discussed, Dr. Valentino, the second opinion examiner, found that appellant had no residuals or disability due to her accepted left shoulder conditions. Both Dr. Valentino and Dr. Ross provided rationale for their respective opinions based on their review of the medical evidence and findings on examination. The Board, therefore, finds that a conflict in medical opinion exists regarding whether appellant has established continuing employment-related disability after December 12, 2019.<sup>16</sup>

As noted, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of a second opinion physician, OWCP shall appoint a third physician to make an examination.<sup>17</sup> The Board will, thus, remand the case for OWCP to refer appellant to an impartial medical specialist, pursuant to 5 U.S.C. § 8123(a), to determine whether she has met her burden of proof to establish continuing employment-related disability or residuals on or after December 12, 2019 due to her accepted employment injury. Following this and any such further development as may be deemed necessary, OWCP shall issue a *de novo* decision.

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<sup>14</sup> 5 U.S.C. § 8123(a); *L.T.*, Docket No. 18-0797 (issued March 14, 2019); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

<sup>15</sup> 20 C.F.R. § 10.321.

<sup>16</sup> *See J.B.*, Docket No. 20-0147 (issued September 20, 2021).

<sup>17</sup> 5 U.S.C. § 8123(a); *see J.B.*, *id.*; *G.K.*, Docket No. 16-1119 (issued March 16, 2018).

### **CONCLUSION**

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits effective December 12, 2019 as she had no further disability or residuals causally related to her accepted May 5, 1992 employment injury. The Board further finds that the case is not in posture for decision on the issue of whether she has met her burden of proof to establish continuing employment-related disability or residuals on or after December 12, 2019 due to her accepted employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 10, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 5, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board